

SENATE JOURNAL

OF THE

IDAHO LEGISLATURE

FIRST REGULAR SESSION
FIFTY-SEVENTH LEGISLATURE

ONE HUNDRED AND TENTH LEGISLATIVE DAY
FRIDAY, APRIL 25, 2003

Senate Chamber

President Risch called the Senate to order at 10 a.m.

Roll call showed all members present except Senators Goedde, Keough, and Marley, absent and formally excused by the Chair; and Senators Andreason, Bunderson, Burkett, Calabretta, Malepeai, McWilliams, Noble, Noh, Stennett, Sweet, and Werk, absent and excused.

Prayer was offered by Chaplain Gene Arnold.

The Pledge of Allegiance was led by Erin Darnell, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

Senators Burkett, Calabretta, and Stennett were recorded present at this order of business.

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of April 24, 2003, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

Senators Malepeai, Noh, and Werk were recorded present at this order of business.

April 25, 2003

The JUDICIARY AND RULES Committee reports that **S 1193**, **SR 106**, and **SJM 104** have been correctly printed.

DARRINGTON, Chairman

S 1193 was referred to the Local Government and Taxation Committee.

SR 106 and **SJM 104** were referred to the Tenth Order of Business, Motions and Resolutions, and ordered held at the Secretary's desk for one legislative day.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Tenth Order of Business.

Motions and Resolutions

Senators Andreason, Bunderson, and Noble were recorded present at this order of business.

The President announced that **HJM 12** was before the Senate for final consideration, the question being, "Shall the memorial be adopted?"

On motion by Senator Brandt, seconded by Senator Stennett, **HJM 12** was adopted by voice vote, title was approved, and the memorial ordered returned to the House.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Thirteenth Order of Business.

Third Reading of Bills

On request by Senator Davis, granted by unanimous consent, **S 1192** retained its place on the Third Reading Calendar for Monday, April 28, 2003.

H 422 was read the third time at length, section by section, and placed before the Senate for final consideration. Senator Pearce arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Burtenshaw, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Hill, Ingram, Kennedy, Little, Lodge, Malepeai, McKenzie, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk, Williams. Total - 31.

NAYS--None.

Absent and excused--Goedde, Keough, Marley, McWilliams. Total - 4.

Total - 35.

Whereupon the President declared **H 422** passed, title was approved, and the bill ordered returned to the House.

Senator Burkett, having been absent and excused when the vote was taken on **H 403**, as amended, on April 24, 2003, disclosed a possible conflict of interest under applicable law, pursuant to Senate Rule 39(H).

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

General Calendar

The President declared the Senate resolved into the Committee of the Whole and called Senator Stegner to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, the President called the Senate to order.

Report of the Committee of the Whole

Senator Stegner, Chairman of the Committee of the Whole, reported out **H 317**, **H 264**, and **H 415**, as amended in the Senate, without recommendation, amended as follows:

SENATE AMENDMENT TO H 317 AMENDMENT TO THE BILL

On page 3 of the printed bill, delete lines 37 through 39 and insert:

"SECTION 2. That Section 63-2501, Idaho Code, be, and the same is hereby amended to read as follows:

63-2501. PURPOSE. It is the intent and purpose of this ~~act~~ chapter to levy a tax on all cigarettes ~~sold~~, used; or consumed, ~~handled or distributed~~ within this state, other than certain cigarettes sold on Indian reservations for consumption by tribal members, and to precollect the tax from the person who first sells, ~~uses~~, ~~consumes~~ receives, handles, or distributes the cigarettes. It is also the intent of this chapter to eliminate unfair competitive business advantages now enjoyed by Indian tobacco retailers in direct competition with non-Indian businesses. This advantage arises because the legislature of the state of Idaho in the past has not exercised its full constitutional authority to require that Indian enterprises collect and remit state cigarette taxes in regard to sales made to non-Indian customers. The legislature hereby intends to exercise the full extent of the state's constitutional power to require that cigarettes sold to non-Indian purchasers on an Indian reservation must have an Idaho cigarette tax stamp affixed, even if sold by an Indian or an Indian enterprise.

SECTION 3. That Section 63-2506, Idaho Code, be, and the same is hereby amended to read as follows:

63-2506. IMPOSITION OF TAX. (1) A tax upon ~~the purchase, storage, cigarettes purchased at retail for use, or consumption, handling, distribution or wholesale sale of cigarettes~~ is hereby imposed at the rate of ~~one and four-tenths cent (1.4¢) for each cigarette or~~ twenty-eight cents (28¢) per package of twenty (20) cigarettes, which tax shall be precollected and paid by the wholesaler, and ~~collected by~~ remitted to the state tax commission. Five cents (5¢) of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system. Five cents (5¢) of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the department of juvenile corrections for distribution to the counties to be utilized for

county juvenile probation services. Appropriated funds shall be distributed quarterly to the counties based upon the percentage the population of the county bears to the population of the state as a whole. The remaining moneys collected and those moneys not appropriated under the provisions of this section shall be distributed as specified in section 63-2520, Idaho Code.

(2) The tax imposed by this section shall not apply to cigarettes sold by a wholesaler pursuant to an authorization by the commission as provided by this section to an Indian retailer solely for resale within the boundaries of an Indian reservation located in Idaho to members of the reservation's governing tribe. Any cigarettes that are nontaxable under this subsection are required to have affixed the cigarette stamps required by this chapter.

(3) Wholesalers making sales of cigarettes to Indian retailers located on an Indian reservation located in Idaho may apply to the commission for an authorization to deduct on its cigarette tax return cigarettes sold by the Indian retailers to members of the reservation's governing tribe. The claim for any such deduction must be made by the wholesaler and approved by the commission before the wholesaler sells the cigarettes to a retailer. If not so claimed, the deduction shall be lost.

(4) The total number of deductible cigarettes allowed by the commission to wholesalers claiming a deduction under subsection (3) of this section for any reporting period shall not exceed the allocated number of cigarettes for the federally recognized Indian reservation in Idaho to which the cigarettes are destined. The allocated number of cigarettes for each federally recognized Indian reservation in Idaho shall be determined by the commission by multiplying the tribal service area population as determined by the bureau of Indian affairs of the United States department of interior by the greater of:

(a) The national cigarette consumption per capita average, as compiled for the most recently completed calendar or fiscal year by the U.S. department of health and human services or other reliable source of data as determined by the state tax commission; or

(b) The cigarette consumption per capita average for that tribe as compiled for the most recently completed calendar year.

(5) A wholesaler may seek, and the commission may allow, a larger number of deductible cigarettes upon documentary proof satisfactory to the commission that actual sales to members of a reservation's governing tribe exceeded the amounts computed in accordance with subsection (4) of this section, provided that the deduction may not exceed the amount of the documented actual sales.

(6) No deduction shall be allowed to a wholesaler, unless the wholesaler certifies to the commission that the economic benefit of the deduction has been passed on to the retailers to whom the sales were made. The economic benefit of the deduction shall be presumed to have been passed on to the Indian retailer when the average price of cigarettes sold by the wholesaler to all retailers other than Indian retailers during the reporting period exceeds, by an amount equal to the tax imposed in this chapter, the average price of cigarettes sold to Indian retailers during the same reporting period.

(7) The following definitions apply to terms used in this section:

(a) "Indian reservation" means lands in the state of Idaho lawfully reserved, as of the date of the cigarette sale, for a federally recognized Indian tribe by treaty with the United States, by federal statute, executive order or regulation.

(b) "Indian retailer" means only a business or enterprise which is wholly owned and operated by an Idaho Indian tribe identified in section 67-4001, Idaho Code, or a business or enterprise which is wholly owned and operated by one (1) or more members of that tribe.

(c) "Reporting period" means the period for which a cigarette tax return is due under section 63-2510, Idaho Code.

SECTION 4. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 5. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 and 4 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2003; Sections 2 and 3 of this act shall be in full force and effect on and after July 1, 2003."

CORRECTIONS TO TITLE

On page 1, delete line 2, and insert: "RELATING TO TAXATION; AMENDING SECTION"; and delete line 9 and insert: "ALTIES; AMENDING SECTION 63-2501, IDAHO CODE, TO APPLY THE CIGARETTE TAX TO USE OR CONSUMPTION OTHER THAN CIGARETTES SOLD ON INDIAN RESERVATIONS FOR CONSUMPTION BY TRIBAL MEMBERS; AMENDING SECTION 63-2506, IDAHO CODE, TO APPLY THE CIGARETTE TAX TO ALL SALES EXCEPT TO MEMBERS OF THE RESERVATION'S GOVERNING TRIBE ON AN INDIAN RESERVATION, TO ESTABLISH A DEDUCTION METHOD AGAINST CIGARETTE TAXES FOR THE EXEMPTION AND TO MAKE A TECHNICAL CORRECTION; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND PROVIDING AN EFFECTIVE DATE."

SENATE AMENDMENT TO H 264 AMENDMENT TO THE BILL

On page 2 of the printed bill, delete lines 22 through 24 and insert:

"SECTION 2. That Section 63-2506, Idaho Code, be, and the same is hereby amended to read as follows:

63-2506. IMPOSITION OF TAX. A tax upon the purchase, storage, use, consumption, handling, distribution or wholesale sale of cigarettes is hereby imposed at the rate of ~~one and four-tenths cent (1.4¢) for each cigarette or twenty-eight~~ fifty-six cents (2856¢) per package of twenty (20) cigarettes, which tax shall be paid by the wholesaler, and collected by the state tax commission. Five cents (5¢) of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system. Five cents (5¢) of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the department of juvenile corrections for distribution to the counties to be utilized for county juvenile probation services. Appropriated funds shall be distributed quarterly to the counties based upon the percentage the population of the county bears to the population of the state as a

whole. The remaining moneys collected and those moneys not appropriated under the provisions of this section shall be distributed as specified in section 63-2520, Idaho Code.

SECTION 3. That Section 63-2509, Idaho Code, be, and the same is hereby amended to read as follows:

63-2509. COMPENSATION FOR AFFIXING STAMPS. Wholesalers shall be allowed as compensation for affixing stamps, ~~five per cent~~ two and five-tenths percent (52.5%) of the face value of the stamps purchased by them.

SECTION 4. That Section 63-2520, Idaho Code, be, and the same is hereby amended to read as follows:

63-2520. DISTRIBUTION OF MONEYS COLLECTED. Revenues received from the taxes imposed by this chapter, and any revenues received from licenses, permits, penalties, interest, or deficiency additions, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) The balance remaining with the state treasurer after deducting the amount described in paragraph (a) above shall be distributed as follows:

(1) ~~43.3%~~ Twenty-one and sixty-five hundredths percent (21.65%) of such balance shall be distributed to the permanent building account created by section 57-1108, Idaho Code.

(2) ~~1%~~ One-half of one percent (0.5%) of such balance shall be distributed to the central tumor registry account. The amount of money so distributed to the central tumor registry account shall not exceed the fiscal year's appropriation, and at such time as the appropriation has been distributed to the central tumor registry account during any fiscal year, all such distributions in excess of the appropriation shall be made instead to the general fund of the state of Idaho.

(3) ~~2.5%~~ One and twenty-five hundredths of one percent (1.25%) of such balance shall be distributed to the cancer control account created by section 57-1702, Idaho Code. Revenues received in the cancer control account shall be paid over to the state treasurer by the state tax commission to be distributed as follows:

(i) Such amounts as are appropriated for purposes specified in section 57-1702, Idaho Code, shall be expended as appropriated;

(ii) Any balance remaining in the cancer control account on June 30 of any fiscal year after the amounts withdrawn by appropriation have been deducted, shall be reserved for transfer to the general fund on July 1 and the state controller shall order such transfer.

(4) All remaining moneys shall be distributed to the general fund of the state of Idaho.

SECTION 5. That Chapter 25, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-2531, Idaho Code, and to read as follows:

63-2531. FLOOR STOCKS TAX. (1) In addition to the tax imposed by section 63-2506, Idaho Code, there is hereby imposed a one (1) time tax at the rate of twenty-eight cents (28¢) per package of twenty (20) cigarettes on all cigarettes to which stamps have been affixed and which are held in stock by a wholesaler at 12:01 a.m. on June 1, 2003.

(2) The tax imposed by this section shall be due and payable to the state tax commission on the due date of the cigarette tax return due under this chapter and shall be reported on such return. The tax shall be subject to all the collection, enforcement and administrative provisions of this chapter.

SECTION 6. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 7. An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 and 6 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 2003; Sections 2, 3 and 5 of this act shall be in full force and effect on and after June 1, 2003. Section 4 of this act shall be in full force and effect on and after July 1, 2003."

CORRECTION TO TITLE

On page 1, delete lines 2 through 6 and insert:

"RELATING TO TAXATION; AMENDING SECTION 63-317, IDAHO CODE, TO INCLUDE OCCUPANCY OF IMPROVEMENTS OR USE IN STORAGE OF VEHICLES, BOATS OR HOUSEHOLD GOODS, PROVIDED SUCH USE IS NOT SOLELY RELATED TO CONSTRUCTION OR SALE OF THE PROPERTY IN THE DEFINITION OF "OCCUPIED" FOR OCCUPANCY TAX PURPOSES; AMENDING SECTION 63-2506, IDAHO CODE, TO INCREASE THE RATE OF THE CIGARETTE TAX; AMENDING SECTION 63-2509, IDAHO CODE, TO REDUCE THE PERCENTAGE THAT WHOLESALERS ARE COMPENSATED FOR AFFIXING STAMPS ON PACKAGES OF CIGARETTES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 63-2520, IDAHO CODE, TO REVISE THE DISTRIBUTION FORMULA FOR CERTAIN CIGARETTE TAX MONEYS; AMENDING CHAPTER 25, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-2531, IDAHO CODE, TO PROVIDE A FLOOR STOCKS TAX FOR PACKAGES OF CIGARETTES HELD IN STOCK BY A WHOLESALER ON JUNE 1, 2003, AND TO PROVIDE WHEN THE TAX IS DUE AND PAYABLE; PROVIDING SEVERABILITY; DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND PROVIDING EFFECTIVE DATES."

SENATE AMENDMENTS TO THE SENATE AMENDMENT TO H 415 AMENDMENTS TO THE AMENDMENTS TO SECTION 1

On page 1 of the printed amendment, delete lines 2 through 11 and insert:

"On page 1 of the printed bill, delete lines 21 through 43; on page 2, delete lines 1 and 2, and insert:

"67-1223. IDAHO COMMEMORATIVE SILVER MEDALLIONS ISSUED BY THE STATE TREASURER.

(1) The state treasurer is hereby authorized to issue a series of commemorative silver medallions for sale to the public. Each series shall commemorate Idaho history, people or resources and may bear the great seal of the state of Idaho. Medallions shall contain one (1) ounce of fine silver, shall be alloyed to at least ninety percent (90%) fineness, and shall not constitute legal tender. No sales or use tax shall be imposed on the sale or purchase of medallions from the state treasurer or any agent designated by the state treasurer. Only mints which have contracted with the state treasurer may produce Idaho commemorative silver medallions. Any other production of such medallions is a misdemeanor.

(2) The state treasurer shall make such arrangements as the state treasurer considers appropriate for the production, distribution and sale of medallions, and shall ensure that all moneys received from the sale of medallions are paid into the state treasury and credited to the state veterans cemetery maintenance fund created in section 65-107, Idaho Code. Provided however, the state treasurer is hereby authorized to retain such amounts from the sale of medallions as necessary to repay costs incurred by the state treasurer in shipping and handling medallions. Provided further, if the initial cost to mint a series of medallions is provided by moneys from another state fund, then such other fund shall first be reimbursed for such costs before the remaining revenues are credited to the state veterans cemetery maintenance fund. The revenues shall be used for the purposes designated in section 65-107, Idaho Code.

(3) The state treasurer, in collaboration with a committee of legislators comprised of representatives appointed by the speaker of the house of representatives and senators appointed by the president pro tempore of the senate, shall determine the number of medallions to be issued in a series, shall determine the number of series to be issued, and shall approve the design of medallions for each series.

(4) The state treasurer, as agent of the state of Idaho, is hereby directed to obtain a federal trademark on the design of each series of medallions issued, and is further authorized, after consultation with the attorney general, to register for a state trademark under chapter 5, title 48, Idaho Code. The design of each series of Idaho commemorative silver medallion is the property of the state of Idaho, and the state of Idaho and the taxpayers shall be deemed to have a trademark on each design. It is the duty of the state treasurer to protect each and every trademark.

(a) If a person reproduces a trademark medallion design and distributes any product using any such design for the purpose of direct or indirect commercial advantage, the person shall owe to the state treasurer, as the agent of the state of Idaho, a royalty fee in addition to the revenues derived from the sale of products using a medallion design. Any person who reproduces a trademark design and distributes any product with a medallion design in violation of the provisions of this subsection (4), shall be deemed to be an infringer of the state of Idaho's trademark. The state treasurer, through the office of the attorney general, is entitled to institute an action for any infringement of that particular right committed while the state treasurer or his designated agent has custody of the trademark.

(b) A court having jurisdiction of a civil action arising under this subsection (4) may grant such relief as it deems appropriate.

At any time while an action under this subsection (4) is pending, the court may order the impounding, on such terms as it deems reasonable, of all products in inventory of the infringer which are in violation of law.

(c) An infringer on the state of Idaho's trademark pursuant to this subsection (4) is liable for any profits the infringer has incurred reproducing a trademark design and distributing products using the design for commercial purposes or is liable for statutory damages as provided in paragraph (d) of this subsection (4).

(d) The state treasurer, as agent of the trademark owner, may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to a trademark medallion design for which any one (1) infringer is liable individually, or for which any two (2) or more infringers are liable jointly and severally, in a sum of not less than two hundred fifty dollars (\$250) or more than ten thousand dollars (\$10,000), as the court considers just.

(e) In any civil action under this subsection (4), the court may allow the recovery of full costs by or against any party and may also award reasonable attorney's fees to the prevailing party as part of the costs.

(5) Medallions in the first series issued shall commemorate "Support of Idaho's Heroes" to honor the courage and sacrifice of all Idaho servicemen and veterans of the United States armed forces and Idaho military branches of the armed services."."

AMENDMENTS TO THE AMENDMENT TO SECTION 2

On page 1 of the printed amendment, in line 13, following "2," insert: "in line 10, delete "coins" and insert: "medallions"; and".

AMENDMENTS TO THE AMENDMENTS TO BILL

On page 1, in line 19, delete "COINS" and insert: "MEDALLIONS"; in line 21, delete "coins" and insert: "medallions"; and in line 23, delete "coins" and insert: "medallions".

CORRECTION TO CORRECTION TO TITLE

On page 1 of the printed amendment, delete lines 32 through 38; on page 2, delete line 1 and insert:

"On page 1, delete lines 2 through 16 and insert: "RELATING TO IDAHO COMMEMORATIVE SILVER MEDALLIONS; AMENDING CHAPTER 36, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3622PP, IDAHO CODE, TO PROVIDE THAT SALES AND PURCHASES OF IDAHO COMMEMORATIVE SILVER MEDALLIONS ARE NOT SUBJECT TO SALES OR USE TAX; AMENDING CHAPTER 12, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-1223, IDAHO CODE, TO PROVIDE FOR ISSUING A SERIES OF IDAHO COMMEMORATIVE SILVER MEDALLIONS COMMEMORATING IDAHO HISTORY, PEOPLE OR RESOURCES, TO AUTHORIZE THE STATE TREASURER TO PROVIDE FOR THE PRODUCTION, DISTRIBUTION AND SALE OF MEDALLIONS, TO DIRECT THAT MONEYS FROM THE SALE OF MEDALLIONS SHALL BE CREDITED TO THE STATE VETERANS CEMETERY MAINTENANCE FUND AFTER COSTS OF SHIPPING AND HANDLING HAVE BEEN REIMBURSED TO THE STATE TREASURER AND IF APPLICABLE, AFTER COSTS OF MINTING HAVE

BEEN REIMBURSED, TO PROVIDE FOR COLLABORATION BETWEEN THE STATE TREASURER AND A COMMITTEE OF LEGISLATORS WHEN DETERMINING THE NUMBER OF MEDALLIONS TO BE ISSUED IN A SERIES, THE NUMBER OF SERIES TO BE ISSUED AND APPROVING MEDALLION DESIGN, TO DIRECT THE STATE TREASURER TO OBTAIN A FEDERAL TRADEMARK FOR EACH MEDALLION DESIGN AND TO PROVIDE FOR PROTECTION OF TRADEMARKS AND TO PROVIDE THAT THE FIRST SERIES OF MEDALLIONS SHALL COMMEMORATE "SUPPORT OF IDAHO'S HEROES"; AMENDING SECTION 65-107, IDAHO CODE, TO PROVIDE THAT REVENUES FROM THE SALE OF STATE COMMEMORATIVE SILVER MEDALLIONS SHALL BE DEPOSITED TO THE STATE VETERANS CEMETERY MAINTENANCE FUND; AND DECLARING AN EMERGENCY."."

The Committee also has **S 1172** and **H 136**, as amended in the Senate, under consideration, reports progress, and begs leave to sit again.

STEGNER, Chairman

On motion by Senator Stegner, seconded by Senator Stennett, the report was adopted by voice vote.

H 317, as amended in the Senate, **H 264**, as amended in the Senate, and **H 415**, as amended in the Senate, as amended in the Senate, were filed for first reading as amended and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

On request by Senator Davis, granted by unanimous consent, the Senate returned to the Sixth Order of Business.

Reports of Standing Committees

April 25, 2003

The JUDICIARY AND RULES Committee reports that Senate amendments to **H 317**, **H 264**, and **H 415**, as amended in the Senate, have been correctly printed.

DARRINGTON, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

April 24, 2003

The Honorable James E. Risch
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have appointed Michael B. Hill of Rexburg, Idaho, to be Acting State Senator for Legislative District 34. This appointment will be effective April

24, 2003, and continue until such time as Senator Brent Hill is able to resume his duties.

Sincerely,
/s/ Dirk Kempthorne
Governor

THE OFFICE OF THE GOVERNOR
EXECUTIVE DEPARTMENT
BOISE, IDAHO
CERTIFICATE OF APPOINTMENT

KNOW ALL MEN, by these Presents that pursuant to the provisions of Section 59-917, *Idaho Code*, Brent Hill, State Senator, District 34, Fremont and Madison Counties, State of Idaho, has nominated Michael B. Hill of Rexburg, Idaho, to perform the duties of this office temporarily as Acting State Senator, District 34, Fremont and Madison Counties.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by virtue of the authority vested in me do hereby appoint Michael B. Hill to the office of State Senator, District 34, Fremont and Madison Counties, State of Idaho, for a term commencing on Monday, April 28, 2003, and continuing until such time as Senator Brent Hill is able to resume his duties.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho.

Done at Boise, the Capital of Idaho, this twenty-fourth day of April, in the year of our Lord Two thousand and three and of the Independence of the United States of America, the two hundred and twenty-seventh year.

/s/ BY THE GOVERNOR DIRK KEMPTHORNE
/s/ SECRETARY OF STATE BEN YSURSA

The correspondence and Certificate of Appointment were ordered filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

April 25, 2003

Mr. President:

I transmit herewith Enrolled **H 412**, **H 413**, **H 414**, and **H 411** for the signature of the President, and I return herewith Enrolled **S 1181**, **S 1182**, **S 1183**, **S 1184**, **S 1185**, and **S 1186**, which have been signed by the Speaker.

JUKER, Chief Clerk

The President announced he was about to sign Enrolled **H 412**, **H 413**, **H 414**, and **H 411**, and when so signed, ordered them returned to the House.

Enrolled **S 1181**, **S 1182**, **S 1183**, **S 1184**, **S 1185**, and **S 1186** were referred to the Judiciary and Rules Committee for transmittal to the Office of the Governor.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

**Introduction, First Reading and Reference of Bills,
House Petitions, Resolutions, and Memorials**

H 317, as amended in the Senate, and **H 264**, as amended in the Senate, by Revenue and Taxation Committee, were read the first time at length and filed for second reading.

H 415, as amended in the Senate, as amended in the Senate, by Ways and Means Committee, was read the first time at length and filed for second reading.

The Senate advanced to the Twelfth Order of Business.

Second Reading of Bills

Motion to Suspend Rules

Moved by Senator Davis, seconded by Senator Stennett, that all rules of the Senate interfering with the immediate passage of **H 317**, as amended in the Senate, be suspended; that the portions of Section 15, Article 3, of the Constitution of the State of Idaho requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that **H 317**, as amended in the Senate, be read the second time by title and the third time at length, section by section, and be put upon its final passage. The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Hill, Ingram, Kennedy, Little, Lodge, Malepeai, McKenzie, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk, Williams. Total - 30.

NAYS--None.

Absent and excused--Burtenshaw, Goedde, Keough, Marley, McWilliams. Total - 5.

Total - 35.

More than two-thirds having voted in the affirmative, the President declared the rules suspended.

H 317, as amended in the Senate, was read the second time by title and the third time at length, section by section, and placed before the Senate for final consideration. Senator McKenzie arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Little, Lodge, McKenzie, Noh, Pearce, Richardson, Sorensen, Stegner, Sweet, Williams. Total - 23.

NAYS--Burkett, Calabretta, Kennedy, Keough, Malepeai, Marley, McWilliams, Noble, Schroeder, Stennett, Werk. Total - 11.

Absent and excused--Burtenshaw. Total - 1.

Paired and voting included in roll call:

AYE - Lodge	NAY - Marley
AYE - Davis	NAY - Keough
AYE - Geddes	NAY - McWilliams
AYE - Goedde	NAY - Burkett

Total - 35.

Whereupon the President declared **H 317**, as amended in the Senate, passed, title was approved, and the bill ordered returned to the House.

Motion to Suspend Rules

Moved by Senator Davis, seconded by Senator Stennett, that all rules of the Senate interfering with the immediate passage of **H 264**, as amended in the Senate, be suspended; that the portions of Section 15, Article 3, of the Constitution of the State of Idaho requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that **H 264**, as amended in the Senate, be read the second time by title and the third time at length, section by section, and be put upon its final passage. The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Hill, Ingram, Kennedy, Little, Lodge, Malepeai, McKenzie, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk, Williams. Total - 30.

NAYS--None.

Absent and excused--Burtenshaw, Goedde, Keough, Marley, McWilliams. Total - 5.

Total - 35.

More than two-thirds having voted in the affirmative, the President declared the rules suspended.

H 264, as amended in the Senate, was read the second time by title and the third time at length, section by section, and placed before the Senate for final consideration. Senators Compton and Bunderson arose as co-sponsors of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Ingram, Little, McWilliams, Noh, Schroeder, Sorensen, Stegner, Williams. Total - 20.

NAYS--Burkett, Calabretta, Kennedy, Keough, Lodge, Malepeai, Marley, McKenzie, Noble, Pearce, Richardson, Stennett, Sweet, Werk. Total - 14.

Absent and excused--Burtenshaw. Total - 1.

Paired and voting included in roll call:

AYE - Goedde	NAY - McKenzie
AYE - Bailey	NAY - Marley
AYE - McWilliams	NAY - Keough

Total - 35.

Whereupon the President declared **H 264**, as amended in the Senate, passed, title was approved, and the bill ordered returned to the House.

On request by Senator Bunderson, granted by unanimous consent, the following Statement of Legislative Intent for **H 264**, as amended in the Senate, and **H 317**, as amended in the Senate, was ordered spread upon the pages of the Journal:

STATEMENT OF LEGISLATIVE INTENT

H 264, as amended in the Senate, and
H 317, as amended in the Senate

It is legislative intent that the amendments to Section 63-2506, *Idaho Code*, contained in **H 264**, as amended in the Senate, and contained in **H 317**, as amended in the Senate, are consistent and not in conflict. The one amendment to Section 63-2506, *Idaho Code*, relates to the tax rate on cigarettes and the other relates to certain wholesalers. These amendments to Section 63-2506, *Idaho Code*, can be compiled without conflict and with a cigarette tax rate of fifty-six cents per pack if both bills are enacted into law.

Motion to Suspend Rules

Moved by Senator Davis, seconded by Senator Stennett, that all rules of the Senate interfering with the immediate passage of **H 415**, as amended in the Senate, as amended in the Senate, be suspended; that the portions of Section 15, Article 3, of the Constitution of the State of Idaho requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that **H 415**, as amended in the Senate, as amended in the Senate, be read the second time by title and the third time at length, section by section, and be put upon its final passage. The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Brandt, Bunderson, Burkett, Calabretta, Cameron, Compton, Darrington, Davis, Gannon, Geddes, Hill, Ingram, Kennedy, Little, Lodge, Malepeai, McKenzie, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk, Williams. Total - 30.

NAYS--None.

Absent and excused--Burtenshaw, Goedde, Keough, Marley, McWilliams. Total - 5.

Total - 35.

More than two-thirds having voted in the affirmative, the President declared the rules suspended.

H 415, as amended in the Senate, as amended in the Senate, was read the second time by title and the third time at length, section by section, and placed before the Senate for final consideration. Senators Richardson and Bailey arose as co-sponsors of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Bailey, Bunderson, Burkett, Calabretta, Cameron, Compton, Darrington, Gannon, Geddes, Hill, Ingram, Kennedy, Little, Lodge, Malepeai, Noble, Noh, Pearce, Richardson, Schroeder, Sorensen, Stegner, Stennett, Sweet, Werk. Total - 26.

NAYS--None.

Absent and excused--Brandt, Burtenshaw, Davis, Goedde, Keough, Marley, McKenzie, McWilliams, Williams. Total - 9.

Total - 35.

Whereupon the President declared **H 415**, as amended in the Senate, as amended in the Senate, passed, title was approved, and the bill ordered returned to the House.

On request by Senator Stegner, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Stegner, seconded by Senator Stennett, by voice vote the Senate adjourned at 1:25 p.m. until the hour of 10:30 a.m., Monday, April 28, 2003.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary